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8
9 **BEFORE THE**
10 **BOARD OF REGISTERED NURSING**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

12 In the Matter of the Second Amended Petition to
Revoke Probation Against:

Case No. 2004 - 285

13 ELIZABETH JOAN MCINTOSH a.k.a.
14 ELIZABETH JOAN HELTON
15 1527 17th Street
Santa Monica, CA 90404

**SECOND AMENDED
PETITION TO REVOKE
PROBATION**

16 Registered Nurse License No. 317563

17 Respondent.

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19 Complainant alleges:

20 PARTIES

21 1. Ruth Ann Terry, M.P.H, R.N (Complainant) brings this Petition to Revoke
22 Probation solely in her official capacity as the Executive Officer of the Board of Registered
23 Nursing, Department of Consumer Affairs.

24 2. On or about August 31, 1980, the Board of Registered Nursing issued
25 Registered Nurse License No. 317563 to Elizabeth Joan McIntosh, a.k.a. Elizabeth Joan Helton
26 (Respondent). Effective June 10, 1984, the Registered Nurse License was revoked. However
27 revocation was stayed and Respondent was placed on probation. Probation was completed June
28 10, 1987. Effective December 5, 2004, the Registered Nurse License was again revoked, and

revocation was again stayed, with Respondent placed on three (3) years probation. The Registered Nurse License, currently on probation, is due to expire on August 31, 2008, unless renewed.

3. In a disciplinary action entitled "In the Matter of Accusation Against Elizabeth Joan McIntosh, a.k.a. Elizabeth Joan Helton," Case No. 2004-285, the Board of Registered Nursing, issued its decision noted above, effective December 5, 2004, in which Respondent's Registered Nurse License was revoked, revocation stayed, and Respondent's license placed on probation for a period of three (3) years with certain terms and conditions. A copy of that decision is attached as **Exhibit A** and is incorporated by reference.

JURISDICTION

4. On or about April 10, 2007, the original Petition to Revoke Probation was filed in this matter, and duly served to Respondent, who filed her timely Notice of Defense. A First Amended Petition to Revoke Probation was filed on or about August 13, 2007 and duly served to Respondent. This Second Amended Petition to Revoke Probation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

STATUTORY PROVISIONS

5. Section 2750 of the Code states:

"Every certificate holder or licensee, including licensees holding temporary licenses, or licensees holding licenses placed in an inactive status, may be disciplined as provided in this article [Article 3 of the Nursing Practice Act (Bus. & Prof Code, § 2700 et seq.)]. As used in this article, "license" includes certificate, registration, or any other authorization to engage in practice regulated by this chapter. The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code [the Administrative Procedure Act], and the board shall have all the powers granted therein."

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6. Section 2764 states:

"The lapsing or suspension of a license by operation of law or by order or decision of the board or a court of law, or the voluntary suspension of a license by a licentiate shall not deprive the board of jurisdiction to proceed with any investigation of or disciplinary proceeding against such license, or to render a decision suspending or revoking such license."

CAUSE TO REVOKE PROBATION

7. Respondent is subject to revocation under section 2750 of the Code on the grounds that Respondent failed to comply with the terms of her probation, as more fully set forth herein.

PROBATION TERMS AND CONDITIONS

8. Due to her failure to comply with Condition 16 and Condition 17, as described more fully below, Respondent has also failed to comply with Condition 2 of probation, which provides:

"2. **Comply with the Board's Probation Program.** Respondent *shall fully comply with the conditions of the Probation Program established by the Board and cooperate with representatives of the Board in its monitoring and investigation of the Respondent's compliance with the Board's Probation Program.* Respondent shall inform the Board in writing within no more than 15 days of any address change and shall at all times maintain an active current license status with the Board, including during any period of suspension.(emphasis added)

9. Respondent has failed to comply with Condition 16 of probation, which provides;

"16. **Abstain from Use of Psychotropic (Mood-Altering) Drugs.** Respondent *shall completely abstain from the possession, injection or consumption by any route of all psychotropic (mood altering) drugs, including alcohol, except when the same are ordered by a health care professional legally authorized to do so as part of documented medical treatment.* Respondent shall have sent to the Board, in writing and within fourteen (14) days, by the prescribing health professional, a report identifying the medication, dosage, the date the

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1 medication was prescribed, the Respondent's prognosis, the date the medication will no longer
2 be required, and the effect on the recovery plan, if appropriate. Respondent shall identify for the
3 Board a single physician, nurse practitioner or physician assistant who shall be aware of
4 Respondent's history of substance abuse and will coordinate and monitor any prescriptions for
5 Respondent for dangerous drugs, controlled substances or mood-altering drugs. The
6 coordinating physician, nurse practitioner, or physician assistant shall report to the Board on a
7 quarterly basis Respondent's compliance with this condition. If any substances considered
8 addictive have been prescribed, the report shall identify a program for the time limited use of any
9 such substances.

10 "The Board may require the single coordinating physician, nurse practitioner, or
11 physician assistant to be a specialist in addictive medicine, or to consult with a specialist in
12 addictive medicine." (emphasis added)

13 a. Propoxphene - Respondent failed to abstain from the use of
14 psychotropic (mood-altering) drugs in that she tested positive for Propoxphene on August 1,
15 2005 and September 1, 2005.

16 b. Alcohol - Respondent also tested positive for alcohol (Ethyl
17 glucuronide) on the following dates:

18 May 31, 2005,
19 August 24, 2005
20 October 11, 2005
21 May 8, 2006
22 June 15, 2006
23 July 27, 2006
24 December 20, 2006
25 May 23, 2007
26 October 12, 2007
27 November 26, 2007
28 November 30, 2007
December 14, 2007
February 4, 2008
February 7, 2008
February 11, 2008
March 11, 2008

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10. Respondent has failed to comply with Condition 17 of probation, which provides:

“17. **Submit to Tests and Samples.** Respondent, at her expense, shall participate in a random, biological fluid testing or a drug screening program which the Board approves. The length of time and frequency will be subject to approval by the Board. Respondent is responsible for keeping the Board informed of Respondent’s current telephone number at all times, Respondent shall also ensure that messages may be left at the telephone number when she is not available and ensure that reports are submitted directly by the testing agency to the Board, as directed. Any confirmed positive finding shall be reported immediately to the Board by the program and Respondent shall be considered in violation of probation.

“In addition, Respondent, at any time during the period of probation, shall fully cooperate with the Board or any of its representatives, and shall, when requested, submit to such tests and samples as the Board or its representatives may require for the detection of alcohol, narcotics, hypnotics, dangerous drugs, or other controlled substances. If Respondent has a positive drug screen for any substance not legally authorized and not reported to the coordinating physician, nurse practitioner, or physician assistant, and the Board files a petition to revoke probation or an accusation, the Board may suspend Respondent from practice pending the final decision on the petition to revoke probation or the accusation. This period of suspension will not apply to the reduction of this probationary time period. If Respondent fails to participate in a random, biological fluid testing or drug screening program within the specified time frame, Respondent shall immediately cease practice and shall not resume practice until notified by the Board. After taking into account documented evidence of mitigation, if the Board files a petition to revoke probation or an accusation, the Board may suspend Respondent from practice pending the final decision on the petition to revoke probation or the accusation. This period of suspension will not apply to the reduction of this probationary time period.”

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1 a. Failed to Submit Required Sample
2 Respondent failed to submit to random biological fluid testing or a drug
3 screening program. Respondent failed to respond to requests for random drug screening the
4 following dates:

- 5 June 14, 2004
- 6 December 27, 2004
- 7 May 9, 2005
- 8 June 14, 2005
- 9 May 31, 2005
- 10 August 17, 2005

11 b. Barred From Screening Program Due to Non-Payment
12 Due to her repeated and continuing failure to make payments for the
13 approved biological fluid testing and drug screening program, Respondent's account was placed
14 in and "on hold" status, leaving her unable to comply with requests for random drug screenings
15 on the following dates:

- 16 October 11, 2005
- 17 October 20, 2005
- 18 November 7, 2005
- 19 December 7, 2005
- 20 December 19, 2005
- 21 January 12, 2006
- 22 February 7, 2006
- 23 February 23, 2006
- 24 March 15, 2006
- 25 April 3, 2006
- 26 August 8, 2006
- 27 September 19, 2006
- 28 October 18, 2006
- October 31, 2006
- November 15, 2006

PRAYER

23 WHEREFORE, Complainant requests that a hearing be held on the matters herein
24 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:


- 25 1. Revoking the probation that was granted by the Board of Registered
26 Nursing in Case No.2004-285 and imposing the disciplinary order that was stayed thereby
27 revoking Registered Nurse License No. 317563 issued to Elizabeth Joan McIntosh a.k.a.
28 Elizabeth Joan Helton;

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2. Revoking or suspending Registered Nurse License No. 317563, issued to
Elizabeth Joan McIntosh;

3. Taking such other and further action as deemed necessary and proper.

DATED: 6/6/08


RUTH ANN TERRY, M.P.H, R.N
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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60302904.wpd

Exhibit A

Decision and Order

Board of Registered Nursing Case No. 2004-285

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

ELIZABETH JOAN MCINTOSH
AKA ELIZABETH JOAN HELTON
1527 17TH Street
Santa Monica, CA 90404

Registered Nurse License No. 317563

Respondent

Case No. 2004-285

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Registered Nursing, Department of Consumer Affairs, as it's Decision in the above entitled matter.

This Decision shall become effective on December 5, 2004.

IT IS SO ORDERED November 5, 2004.

Sandra R. Erickson

President
Board of Registered Nursing
Department of Consumer Affairs
State of California

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of the State of California
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Attorneys for Complainant

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

ELIZABETH JOAN MCINTOSH
AKA ELIZABETH JOAN HELTON
1527 17th Street
Santa Monica, CA 90404
Registered Nursing License No. 317563

Respondent.

Case No. 2004-285

OAH No. To Be Assigned

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

In the interest of a prompt and speedy settlement of this matter, consistent with the public interest and the responsibility of the Board of Registered Nursing of the Department of Consumer Affairs, the parties hereby agree to the following Stipulated Settlement and Disciplinary Order which will be submitted to the Board for approval and adoption as the final disposition of the Accusation

PARTIES

1. Ruth Ann Terry, M.P.H., R.N. (Complainant) is the Executive Officer of the Board of Registered Nursing. She brought this action solely in her official capacity and is represented in this matter by Bill Lockyer, Attorney General of the State of California, by Earl R. Plowman, Deputy Attorney General.

2. Respondent Elizabeth Joan McIntosh (Respondent) is represented in this proceeding by attorney Theodore A. Cohen, whose address is 9952 Santa Monica Boulevard, Beverly Hills, CA. 90212.

3. On or about August 31, 1980, the Board of Registered Nursing issued Registered Nursing License No. 317563 to Elizabeth Joan McIntosh, aka Elizabeth Joan Helton (Respondent). The License was in full force and effect at all times relevant to the charges brought in Accusation No. 2004-285 and will expire on August 31, 2004, unless renewed.

JURISDICTION

4. Accusation No. 2004-285 was filed before the Board of Registered Nursing (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on May 5, 2004. Respondent timely filed her Notice of Defense on or about May 14, 2004, contesting the Accusation. A copy of Accusation No. 2004-285 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 2004-285. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

6. Respondent is fully aware of her legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel at her own expense; the right to confront and cross-examine the witnesses against her; the right to present evidence and to testify on her own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

8. Respondent admits the truth of each and every charge and allegation in Accusation No. 2004-285.

9. Respondent agrees that her Registered Nursing License is subject to discipline and she agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order below.

RESERVATION

10. The admissions made by Respondent herein are only for the purposes of this proceeding, or any other proceedings in which the Board of Registered Nursing or other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceeding.

CONTINGENCY

11. This stipulation shall be subject to approval by the Board of Registered Nursing. Respondent understands and agrees that counsel for Complainant and the staff of the Board of Registered Nursing may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or her counsel. By signing the stipulation, Respondent understands and agrees that she may not withdraw her agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

12: The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

13. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

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1 **DISCIPLINARY ORDER**

2 **IT IS HEREBY ORDERED** that Registered Nursing License No. 317563 issued
3 to Respondent Elizabeth Joan McIntosh is revoked. However, the revocation is stayed and
4 Respondent is placed on probation for three (3) years on the following terms and conditions.

5 **Severability Clause.** Each condition of probation contained herein is a separate
6 and distinct condition. If any condition of this Order, or any application thereof, is declared
7 unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other
8 applications thereof, shall not be affected. Each condition of this Order shall separately be valid
9 and enforceable to the fullest extent permitted by law.

10 1. **Obey All Laws.** Respondent shall obey all federal, state and local laws.
11 A full and detailed account of any and all violations of law shall be reported by Respondent to
12 the Board in writing within seventy-two (72) hours of occurrence. To permit monitoring of
13 compliance with this condition, Respondent shall submit completed fingerprint forms and
14 fingerprint fees within 45 days of the effective date of the decision, unless previously submitted
15 as part of the licensure application process.

16 **Criminal Court Orders:** If Respondent is under criminal court orders, including
17 probation or parole, and the order is violated, this shall be deemed a violation of these probation
18 conditions, and may result in the filing of an accusation and/or petition to revoke probation.

19 2. **Comply with the Board's Probation Program.** Respondent shall fully
20 comply with the conditions of the Probation Program established by the Board and cooperate
21 with representatives of the Board in its monitoring and investigation of the Respondent's
22 compliance with the Board's Probation Program. Respondent shall inform the Board in writing
23 within no more than 15 days of any address change and shall at all times maintain an active,
24 current license status with the Board, including during any period of suspension.

25 Upon successful completion of probation, Respondent's license shall be fully restored.

26 3. **Report in Person.** Respondent, during the period of probation, shall
27 appear in person at interviews/meetings as directed by the Board or its designated
28 representatives.

1 4. **Residency, Practice, or Licensure Outside of State.** Periods of
2 residency or practice as a registered nurse outside of California shall not apply toward a reduction
3 of this probation time period. Respondent's probation is tolled, if and when she resides outside
4 of California. Respondent must provide written notice to the Board within 15 days of any change
5 of residency or practice outside the state, and within 30 days prior to re-establishing residency or
6 returning to practice in this state.

7 Respondent shall provide a list of all states and territories where she has ever been
8 licensed as a registered nurse, vocational nurse, or practical nurse. Respondent shall further
9 provide information regarding the status of each license and any changes in such license status
10 during the term of probation. Respondent shall inform the Board if she applies for or obtains a
11 new nursing license during the term of probation.

12 5. **Submit Written Reports.** Respondent, during the period of probation,
13 shall submit or cause to be submitted such written reports/declarations and verification of actions
14 under penalty of perjury, as required by the Board. These reports/declarations shall contain
15 statements relative to Respondent's compliance with all the conditions of the Board's Probation
16 Program. Respondent shall immediately execute all release of information forms as may be
17 required by the Board or its representatives.

18 Respondent shall provide a copy of this Decision to the nursing regulatory agency
19 in every state and territory in which she has a registered nurse license.

20 6. **Function as a Registered Nurse.** Respondent, during the period of
21 probation, shall engage in the practice of registered nursing in California for a minimum of 24
22 hours per week for 6 consecutive months or as determined by the Board.

23 For purposes of compliance with the section, "engage in the practice of registered
24 nursing" may include, when approved by the Board, volunteer work as a registered nurse, or
25 work in any non-direct patient care position that requires licensure as a registered nurse. The
26 Board may require that advanced practice nurses engage in advanced practice nursing for a
27 minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

28 If Respondent has not complied with this condition during the probationary term, and

1 Respondent has presented sufficient documentation of her good faith efforts to comply with this
2 condition, and if no other conditions have been violated, the Board, in its discretion, may grant
3 an extension of Respondent's probation period up to one year without further hearing in order to
4 comply with this condition. During the one year extension, all original conditions of probation
5 shall apply.

6 7. **Employment Approval and Reporting Requirements.** Respondent
7 shall obtain prior approval from the Board before commencing or continuing any employment,
8 paid or voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all
9 performance evaluations and other employment related reports as a registered nurse upon request
10 of the Board. Respondent shall provide a copy of this Decision to her employer and immediate
11 supervisors prior to commencement of any nursing or other health care related employment.

12 In addition to the above, Respondent shall notify the Board in writing within
13 seventy-two (72) hours after she obtains any nursing or other health care related employment.
14 Respondent shall notify the Board in writing within seventy-two (72) hours after she is
15 terminated or separated, regardless of cause, from any nursing, or other health care related
16 employment with a full explanation of the circumstances surrounding the termination or
17 separation.

18 8. **Supervision.** Respondent shall obtain prior approval from the Board
19 regarding Respondent's level of supervision and/or collaboration before commencing or
20 continuing any employment as a registered nurse, or education and training that includes patient
21 care. Respondent shall practice only under the direct supervision of a registered nurse in good
22 standing (no current discipline) with the Board of Registered Nursing, unless alternative methods
23 of supervision and/or collaboration (e.g., with an advanced practice nurse or physician) are
24 approved. Respondent's level of supervision and/or collaboration may include, but is not limited
25 to the following:

26 (a) Maximum - The individual providing supervision and/or collaboration is
27 present in the patient care area or in any other work setting at all times.

28 (b) Moderate - The individual providing supervision and/or collaboration is in

1 the patient care unit or in any other work setting at least half the hours Respondent works.

2 (c) Minimum - The individual providing supervision and/or collaboration has
3 person-to-person communication with Respondent at least twice during each shift worked.

4 (d) Home Health Care - If Respondent is approved to work in the home health
5 care setting, the individual providing supervision and/or collaboration shall have person-to-
6 person communication with Respondent as required by the Board each work day. Respondent
7 shall maintain telephone or other telecommunication contact with the individual providing
8 supervision and/or collaboration as required by the Board during each work day. The individual
9 providing supervision and/or collaboration shall conduct, as required by the Board, periodic, on-
10 site visits to patients' homes visited by Respondent with or without Respondent present.

11 9. **Employment Limitations.** Respondent shall not work for a nurse's
12 registry, in any private duty position as a registered nurse, a temporary nurse placement agency, a
13 traveling nurse, or for an in-house nursing pool. Respondent shall not work for a licensed home
14 health agency as a visiting nurse unless the registered nursing supervision and other protections
15 for home visits have been approved by the Board. Respondent shall not work in any other
16 registered nursing occupation where home visits are required. Respondent shall not work in any
17 health care setting as a supervisor of registered nurses. The Board may additionally restrict
18 Respondent from supervising licensed vocational nurses and/or unlicensed assistive personnel on
19 a case-by-case basis. Respondent shall not work as a faculty member in an approved school of
20 nursing or as an instructor in a Board approved continuing education program. Respondent shall
21 work only on a regularly assigned, identified and predetermined worksite(s) and shall not work in
22 a float capacity. If Respondent is working or intends to work in excess of 40 hours per week, the
23 Board may request documentation to determine whether there should be restrictions on the hours
24 of work.

25 10. **Complete a Nursing Course(s).** Respondent, at her own expense, shall
26 enroll and successfully complete a course(s) relevant to the practice of registered nursing no later
27 than six months prior to the end of her probationary term.

28 Respondent shall obtain prior approval from the Board before enrolling in the

1 course(s). Respondent shall submit to the Board the original transcripts or certificates of
2 completion for the above required course(s). The Board shall return the original documents to
3 Respondent after photocopying them for its records.

4 **11. Cost Recovery.** Respondent shall pay to the Board costs associated with
5 its investigation and enforcement pursuant to Business and Professions Code section 125.3 in the
6 amount of \$5280. Respondent shall be permitted to pay these costs in a payment plan approved
7 by the Board, with payments to be completed no later than three months prior to the end of the
8 probation term. If Respondent has not complied with this condition during the probationary term,
9 and Respondent has presented sufficient documentation of her good faith efforts to comply with
10 this condition, and if no other conditions have been violated, the Board, in its discretion, may
11 grant an extension of Respondent's probation period up to one year without further hearing in
12 order to comply with this condition. During the one year extension, all original conditions of
13 probation will apply.

14 **12. Violation of Probation.** If Respondent violates the conditions of her
15 probation, the Board after giving Respondent notice and an opportunity to be heard, may set
16 aside the stay order and impose the stayed discipline (revocation/suspension) of Respondent's
17 license. If during the period of probation, an accusation or petition to revoke probation has been
18 filed against Respondent's license or the Attorney General's Office has been requested to prepare
19 an accusation or petition to revoke probation against Respondent's license, the probationary
20 period shall automatically be extended and shall not expire until the accusation or petition has
21 been acted upon by the Board.

22 **13. License Surrender.** During Respondent's term of probation, if she ceases
23 practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of
24 probation, Respondent may surrender her license to the Board. The Board reserves the right to
25 evaluate Respondent's request and to exercise its discretion whether to grant the request, or to
26 take any other action deemed appropriate and reasonable under the circumstances, without
27 further hearing. Upon formal acceptance of the tendered license and wall certificate, Respondent
28 will no longer be subject to the conditions of probation.

1 Surrender of Respondent's license shall be considered a disciplinary action and
2 shall become a part of Respondent's license history with the Board. A registered nurse whose
3 license has been surrendered may petition the Board for reinstatement no sooner than the
4 following minimum periods from the effective date of the disciplinary decision:

5 (1) Two years for reinstatement of a license that was surrendered for any
6 reason other than a mental or physical illness; or

7 (2) One year for a license surrendered for a mental or physical illness.

8 14. **Physical Examination.** Within 45 days of the effective date of this
9 Decision, Respondent, at her expense, shall have a licensed physician, nurse practitioner, or
10 physician assistant, who is approved by the Board before the assessment is performed, submit an
11 assessment of the Respondent's physical condition and capability to perform the duties of a
12 registered nurse. Such an assessment shall be submitted in a format acceptable to the Board. If
13 medically determined, a recommended treatment program will be instituted and followed by the
14 Respondent with the physician, nurse practitioner, or physician assistant providing written
15 reports to the Board on forms provided by the Board. If Respondent is determined to be unable to
16 practice safely as a registered nurse, the licensed physician, nurse practitioner, or physician
17 assistant making this determination shall immediately notify the Board and Respondent by
18 telephone, and the Board shall request that the Attorney General's office prepare an accusation or
19 petition to revoke probation. Respondent shall immediately cease practice and shall not resume
20 practice until notified by the Board. During this period of suspension, Respondent shall not
21 engage in any practice for which a license issued by the Board is required until the Board has
22 notified Respondent that a medical determination permits Respondent to resume practice. This
23 period of suspension will not apply to the reduction of this probationary time period.

24 If Respondent fails to have the above assessment submitted to the Board within
25 the 45-day requirement, Respondent shall immediately cease practice and shall not resume
26 practice until notified by the Board. This period of suspension will not apply to the reduction of
27 this probationary time period. The Board may waive or postpone this suspension only if
28 significant, documented evidence of mitigation is provided. Such evidence must establish good

1 faith efforts by Respondent to obtain the assessment, and a specific date for compliance must be
2 provided. Only one such waiver or extension may be permitted.

3 15. **Participate in Treatment/Rehabilitation Program for Chemical**
4 **Dependence.** Respondent, at her expense, shall successfully complete during the probationary
5 period or shall have successfully completed prior to commencement of probation a Board-
6 approved treatment/rehabilitation program of at least six months duration. As required, reports
7 shall be submitted by the program on forms provided by the Board. If Respondent has not
8 completed a Board-approved treatment/rehabilitation program prior to commencement of
9 probation, Respondent, within 45 days from the effective date of the decision, shall be enrolled in
10 a program. If a program is not successfully completed within the first nine months of probation,
11 the Board shall consider Respondent in violation of probation. Based on Board recommendation,
12 each week Respondent shall be required to attend at least one, but no more than five 12-step
13 recovery meetings or equivalent (e.g., Narcotics Anonymous, Alcoholics Anonymous, etc.) and a
14 nurse support group as approved and directed by the Board. If a nurse support group is not
15 available, an additional 12-step meeting or equivalent shall be added. Respondent shall submit
16 dated and signed documentation confirming such attendance to the Board during the entire period
17 of probation. Respondent shall continue with the recovery plan recommended by the
18 treatment/rehabilitation program or a licensed mental health examiner and/or other ongoing
19 recovery groups.

20 16. **Abstain from Use of Psychotropic (Mood-Altering) Drugs.** Respondent
21 shall completely abstain from the possession, injection or consumption by any route of all
22 psychotropic (mood altering) drugs, including alcohol, except when the same are ordered by a
23 health care professional legally authorized to do so as part of documented medical treatment.
24 Respondent shall have sent to the Board, in writing and within fourteen (14) days, by the
25 prescribing health professional, a report identifying the medication, dosage, the date the
26 medication was prescribed, the Respondent's prognosis, the date the medication will no longer
27 be required, and the effect on the recovery plan, if appropriate. Respondent shall identify for the
28 Board a single physician, nurse practitioner or physician assistant who shall be aware of

1 Respondent's history of substance abuse and will coordinate and monitor any prescriptions for
2 Respondent for dangerous drugs, controlled substances or mood-altering drugs. The
3 coordinating physician, nurse practitioner, or physician assistant shall report to the Board on a
4 quarterly basis Respondent's compliance with this condition. If any substances considered
5 addictive have been prescribed, the report shall identify a program for the time limited use of any
6 such substances.

7 The Board may require the single coordinating physician, nurse practitioner, or
8 physician assistant to be a specialist in addictive medicine, or to consult with a specialist in
9 addictive medicine.

10 17. **Submit to Tests and Samples.** Respondent, at her expense, shall
11 participate in a random, biological fluid testing or a drug screening program which the Board
12 approves. The length of time and frequency will be subject to approval by the Board.
13 Respondent is responsible for keeping the Board informed of Respondent's current telephone
14 number at all times. Respondent shall also ensure that messages may be left at the telephone
15 number when she is not available and ensure that reports are submitted directly by the testing
16 agency to the Board, as directed. Any confirmed positive finding shall be reported immediately
17 to the Board by the program and Respondent shall be considered in violation of probation.

18 In addition, Respondent, at any time during the period of probation, shall fully
19 cooperate with the Board or any of its representatives, and shall, when requested, submit to such
20 tests and samples as the Board or its representatives may require for the detection of alcohol,
21 narcotics, hypnotics, dangerous drugs, or other controlled substances. If Respondent has a
22 positive drug screen for any substance not legally authorized and not reported to the coordinating
23 physician, nurse practitioner, or physician assistant, and the Board files a petition to revoke
24 probation or an accusation, the Board may suspend Respondent from practice pending the final
25 decision on the petition to revoke probation or the accusation. This period of suspension will not
26 apply to the reduction of this probationary time period. If Respondent fails to participate in a
27 random, biological fluid testing or drug screening program within the specified time frame,
28 Respondent shall immediately cease practice and shall not resume practice until notified by the

1 Board. After taking into account documented evidence of mitigation, if the Board files a petition
2 to revoke probation or an accusation, the Board may suspend Respondent from practice pending
3 the final decision on the petition to revoke probation or the accusation. This period of suspension
4 will not apply to the reduction of this probationary time period.

5 18. **Mental Health Examination.** Respondent shall, within 45 days of the
6 effective date of this Decision, have a mental health examination including psychological testing
7 as appropriate to determine her capability to perform the duties of a registered nurse. The
8 examination will be performed by a psychiatrist, psychologist or other licensed mental health
9 practitioner approved by the Board. The examining mental health practitioner will submit a
10 written report of that assessment and recommendations to the Board. All costs are the
11 responsibility of Respondent. Recommendations for treatment, therapy or counseling made as a
12 result of the mental health examination will be instituted and followed by Respondent.

13 If Respondent is determined to be unable to practice safely as a registered nurse,
14 the licensed mental health care practitioner making this determination shall immediately notify
15 the Board and Respondent by telephone, and the Board shall request that the Attorney General's
16 office prepare an accusation or petition to revoke probation. Respondent shall immediately cease
17 practice and may not resume practice until notified by the Board. During this period of
18 suspension, Respondent shall not engage in any practice for which a license issued by the Board
19 is required, until the Board has notified Respondent that a mental health determination permits
20 Respondent to resume practice. This period of suspension will not apply to the reduction of this
21 probationary time period.

22 If Respondent fails to have the above assessment submitted to the Board within
23 the 45-day requirement, Respondent shall immediately cease practice and shall not resume
24 practice until notified by the Board. This period of suspension will not apply to the reduction of
25 this probationary time period. The Board may waive or postpone this suspension only if
26 significant, documented evidence of mitigation is provided. Such evidence must establish good
27 faith efforts by Respondent to obtain the assessment, and a specific date for compliance must be
28 provided. Only one such waiver or extension may be permitted.

1 19. **Therapy or Counseling Program.** Respondent, at her expense, shall
2 participate in an on-going counseling program until such time as the Board releases her from this
3 requirement and only upon the recommendation of the counselor. Written progress reports from the
4 counselor will be required at various intervals.

5
6 **ACCEPTANCE**

7 I have carefully read the above Stipulated Settlement and Disciplinary Order and have
8 fully discussed it with my attorney, Theodore A. Cohen. I understand the stipulation and the effect it
9 will have on my Registered Nursing License. I enter into this Stipulated Settlement and Disciplinary
10 Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the
11 Board of Registered Nursing.

12 **DATED:** 6/25/04.

13
14 
15 ELIZABETH JOAN MCINTOSH
16 Respondent

17 **SUBMISSION**

18 I have read and fully discussed with Respondent Elizabeth Joan McIntosh the terms and conditions
19 other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form
20 and content.

21 **DATED:** 6/24/04.

22 
23 THEODORE A. COHEN
24 Attorney for Respondent
25
26
27
28

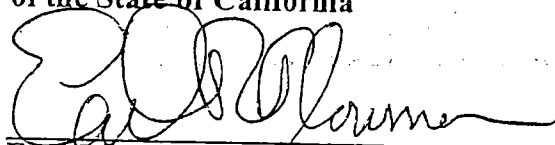
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ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board of Registered Nursing of the Department of Consumer Affairs.

DATED: July 6, 2004.

BILL LOCKYER, Attorney General
of the State of California



EARL R. PLOWMAN
Deputy Attorney General

Attorneys for Complainant

DOJ Docket/Matter ID Number: 03579110-LA2004600257
Mcintoshstip.wpd

Exhibit A

Accusation No. 2004-285

1 BILL LOCKYER, Attorney General
of the State of California
2 EARL R. PLOWMAN, State Bar No. 54339
Deputy Attorney General
3 California Department of Justice
300 So. Spring Street, Suite 1702
4 Los Angeles, CA 90013
Telephone: (213) 897-2536
5 Facsimile: (213) 897-2804
6 Attorneys for Complainant
7

8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 2004-285

12 ELIZABETH JOAN MCINTOSH
13 AKA ELIZABETH JOAN HELTON
1527 17th Street
Santa Monica, CA 90404

A C C U S A T I O N

14 Registered Nursing License No. 317563

15 Respondent.
16

17
18 Complainant alleges:

19 PARTIES

20 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) brings this Accusation
21 solely in her official capacity as the Executive Officer of the Board of Registered Nursing
22 (Board), Department of Consumer Affairs.

23 2. On or about August 31, 1980, the Board issued Registered Nursing
24 License No. 317563 to Elizabeth Joan McIntosh, aka Elizabeth Joan Helton (Respondent). The
25 license was in full force and effect at all times relevant to the charges brought herein and will
26 expire on August 31, 2004, unless renewed.

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1 "(e) Falsify, or make grossly incorrect, grossly inconsistent, or unintelligible
2 entries in any hospital, patient, or other record pertaining to the substances described in
subdivision (a) of this section."

3 7. Health & Safety Code section 11173 subdivision (a), states that no person
4 shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the
5 administration of or prescription for controlled substances, (1) by fraud, deceit,
6 misrepresentation, or subterfuge; or (2) by the concealment of a material fact.

7 8. Health & Safety Code section 11173 subdivision (b), states that no person
8 shall make a false statement in any prescription, order, report, or record, required by this division.

9 9. Section 125.3 provides that the Board may request the administrative law
10 judge to direct a licensee found to have committed a violation or violations of the licensing act
11 to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

12 DRUGS

13 10. Demerol (generic - meperidine hydrochloride) is a dangerous drug as
14 defined by section 4022 and is classified as a Schedule II controlled substance pursuant to Health
15 and Safety Code section 11055(c)(17).

16 11. Tylenol #3 (generic - Codeine and Acetaminophen) is a dangerous drug as
17 defined by section 4022 and is classified as a Schedule III controlled substance as listed in
18 Health and Safety Code section 11056(e)(2). It is a narcotic analgesic used in the treatment of
19 moderate to severe pain.

20 12. Vicodin² (generic - Hydrocodone and Acetaminophen) is a dangerous drug
21 as defined by section 4022 and is classified as a Schedule III controlled substance as defined in
22 Health and Safety Code section 11056(b)(1). It is a narcotic analgesic used in the treatment of
23 moderate to severe pain.

24 FIRST CAUSE FOR DISCIPLINE

25 (Unprofessional Conduct)

26 13. Respondent is subject to disciplinary action pursuant to section 2761(a) of
27

28 2. Lortab is a generic drug for Vicodin.

1 the Code in that during a period from April 2002 to September 2002, while employed at St.
2 John's Health Center, Santa Monica, California she committed the followings acts of
3 unprofessional conduct:

- 4
- 5 a. Respondent diverted and self-administered controlled substances.
- 6 b. Respondent falsified, made grossly incorrect, inconsistent or unintelligible
7 entries.

8 SECOND CAUSE FOR DISCIPLINE

9 ~~(Falsify, Grossly Incorrect, Inconsistent, or Unintelligible Entries)~~

10 14. Respondent is subject to disciplinary action pursuant to section 2761 of the
11 Code for unprofessional conduct as defined in section 2761(e) of the Code in that while on duty
12 at St. John's Health Center, Santa Monica, California, she falsified, made grossly incorrect,
13 inconsistent or unintelligible entries in hospital and patient records as follows:

14 Patient No. L020222592

15 a. On June 30, 2002, at 0902 hours, Respondent withdrew two 5mg Lortab
16 tablets (10mg total) and at 1003 hours and 1236 hours, Respondent withdrew 50mg/ml Demerol
17 syringe. The physician's order did not indicate Demerol or Lortab. The Nursing Record of
18 Patient Progress reflected 25mg Demerol administered to the patient at 0900 hours and 50mg
19 Demerol administered to the patient at 1150 hours. Respondent failed to document in the
20 patient's records or otherwise account for the disposition of 75mg Demerol, and 10mg Lortab.

21

22 Patient No. L020222659

23 b. On June 30, 2002, at 1236 hours, Respondent withdrew two 5mg Lortab
24 tablets (10mg total). The physician's order did not indicate Lortab. Respondent failed to
25 document in the patient's records or otherwise account for the disposition of 10mg Lortab.

26 Patient No. L020222642

27 c. On June 30, 2002, at 0915 hours, Respondent withdrew two 5mg Lortab
28 tablets (10mg total). The physician's order did not indicate Lortab. Respondent failed to

1 document in the patient's records or otherwise account for the disposition of 10mg Lortab.

2

3

Patient No. L020223145

4

d. On June 30, 2002, at 1611 hours, Respondent withdrew two 5mg Lortab
5 tablets (10mg total). The physician's order did not indicate Lortab. Respondent failed to
6 document in the patient's records or otherwise account for the disposition of 10mg Lortab.

7

Patient No. L020415063

8

e. On July 26, 2002, at 2016 hours, Respondent withdrew two 5mg Lortab
9 tablets (10mg total). The physician's order did not indicate Lortab. Respondent failed to
10 document in the patient's records or otherwise account for the disposition of 10mg Lortab.

11

Patient No. L020531554

12

f. On August 11, 2002, at 2311 hours, Respondent withdrew two 5mg
13 Lortab tablets (10mg total). The physician's order was for two 5mg Lortab tablets (10mg total).
14 However the patient was discharged from the hospital at 2300 hours. Respondent failed to
15 document in the patient's records or otherwise account for the disposition of 10mg Lortab.

16

Patient No. L020531562

17

g. On August 11, 2002, at 2310 hours, Respondent withdrew two 5mg Lortab
18 tablets (10mg total). The physician's order was for one 5mg Lortab tablet. However the patient
19 was discharged from the hospital at 2210 hours. Respondent failed to document in the patient's
20 records or otherwise account for the disposition of 10mg Lortab.

21

Patient No. L020531505

22

h. On August 11, 2002, at 2028 hours, Respondent withdrew two 5mg Lortab
23 tablets (10mg total). The physician's order was for one 5mg Lortab tablet. However the patient
24 was discharged from the hospital at 2000 hours. Respondent failed to document in the patient's
25 records or otherwise account for the disposition of 10mg Lortab.

26

Patient No. L020531497

27

i. On August 11, 2002, at 2221 hours, Respondent withdrew two 5mg Lortab
28 tablets (10mg total). The physician's order was for one 5mg Lortab tablet. However the patient

1 was discharged from the hospital at 2215 hours. Respondent failed to document in the patient's
2 records or otherwise account for the disposition of 5mg Lortab.

3 Patient No. L020531323

4 j. On August 11, 2002, at 1953 hours, Respondent withdrew two 5mg Lortab
5 tablets (10mg total). The physician's order was for two 5mg Lortab tablets (10mg total).
6 However the patient was discharged from the hospital at 1830 hours. Respondent failed to
7 document in the patient's records or otherwise account for the disposition of 10mg Lortab.

8 Patient No. L020586368

9 ~~k.~~ On August 20, 2002, at 1759 hours, Respondent withdrew one 50mg/ml
10 Meperidine syringe and at 1903 hours withdrew two 5mg Lortab tablets (10mg total). The
11 physician's order did not indicate Meperidine or Lortab. Respondent documented 25mg IVP of
12 Demerol at 1650 hours. Respondent failed to document in the patient's records or otherwise
13 account for the disposition of 25mg/ml Meperidine and 10mg Lortab.

14 Patient No. L020581435

15 l. On August 20, 2002, at 1620 hours, Respondent withdrew two 5mg Lortab
16 tablets (10mg total). The physician's order did not indicate Lortab. Respondent failed to
17 document in the patient's records or otherwise account for the disposition of 10mg Lortab.

18 Patient No. L020583423

19 m. On August 20, 2002, at 1740 hours, Respondent withdrew two 5mg Lortab
20 tablets (10mg total). The physician's order did not indicate Lortab. However the patient was
21 discharged from the hospital at 1600 hours. Respondent failed to document in the patient's
22 records or otherwise account for the disposition of 10mg Lortab.

23 Patient No. L020839577

24 n. On September 28, 2002, at 0821 hours, Respondent withdrew two 5mg
25 Lortab tablets (10mg total); at 0825 hours, Respondent withdrew one 10mg/ml Morphine
26 syringe; and at 1130 hours, Respondent withdrew one 100mcg/2ml Fentanyl ampule. The
27 physician's orders did not indicate Lortab. At 0829 hours, Nursing Discharge Notes reveal two
28 Vicodin tablets were dispensed by Respondent. Respondent made a notation that she wasted the

1 Vicodin; however, no witness was present. Respondent failed to document in the patient's
2 records or otherwise account for the disposition of 10mg Lortab.

3 Patient No. L020839742

4 o. On September 28, 2002, at 1210 hours, Respondent withdrew one 30mg
5 Acetaminophen/Co tablet and at 1139 hours, Respondent withdrew two 5mg Lortab tablets
6 (10mg total). The physician's order did not indicate Lortab. Respondent failed to document in
7 the patient's records or otherwise account for the disposition of 10mg Lortab.

8 Patient No. L020839619

9 ~~p. On September 28, 2002, at 0853 hours, Respondent withdrew two 5mg~~
10 Lortab tablets (10mg total). The physician's order did not indicate Lortab. Respondent failed to
11 document in the patient's records or otherwise account for the disposition of 10mg Lortab.

12 Patient No. L020839999

13 q. On September 28, 2002, at 1750 hours, Respondent withdrew one 5mg
14 Lortab tablet. The patient was discharged from the hospital at 1700 hours. The physician's order
15 did not indicate Lortab. Respondent failed to document in the patient's records or otherwise
16 account for the disposition of 5mg Lortab.

17 Patient No. L020839643

18 r. On September 28, 2002, at 0959 hours, Respondent withdrew two 5mg
19 Lortab tablets (10mg total). At 1733 hours, Respondent made a notation that the medication was
20 returned; however, there was no witness. Respondent failed to document in the patient's records
21 or otherwise account for the disposition of 10mg Lortab.

22 Patient No. L020839981

23 s. On September 28, 2002, at 1501 hours, Respondent withdrew two 30mg
24 Acetaminophen/Cod tablets (60mg total); at 1506 hours, Respondent withdrew one 10mg/ml
25 Morphine syringe; and at 1649 hours, Respondent withdrew two 5mg Lortab tablets (10mg total).
26 The physician's order indicate Morphine 2mg IM, Morphine 4mg IM and two Vicodin tablets.
27 Respondent failed to document in the patient's records or otherwise account for the disposition of
28 60mg Tylenol #3.

1 THIRD CAUSE FOR DISCIPLINE

2 (Illegal Possession of Prescribed Controlled Substances)

3 15. Respondent is subject to disciplinary action pursuant to section 2761 of
4 the Code for unprofessional conduct as defined in section 2762(a) of the Code in conjunction
5 with Health and Safety Code sections 11173(a) and (b) in that during a period from
6 approximately April 2002 to September 2002, Respondent diverted Vicodin (Lortab); 60mg
7 Tylenol #3 and 100mg Demerol, controlled substances, from St. John's Health Center as
8 described above in paragraphs 13 and 14.

9 FOURTH CAUSE FOR DISCIPLINE

10 (Unprofessional Conduct - Incompetent)

11 16. Respondent is subject to disciplinary action for unprofessional conduct
12 pursuant to Section 2761(a) in that Respondent was incompetent for failing to accurately follow
13 the treating physicians orders as follows:

14 a. By administering or claiming to have administered medication to patients,
15 which were not ordered by the treating physician, as stated in paragraph 14.

16 FIFTH CAUSE FOR DISCIPLINE

17 (Violation of the Nursing Practice Act)

18 17. Respondent is subject to disciplinary action pursuant to section 2761(d) of
19 the Code for unprofessional conduct, in that on during a period from approximately August 2002
20 to September 2002, Respondent violated or attempted to violate, directly or indirectly the
21 provisions of the Nursing Practice Act, as alleged in paragraphs 13 through 16 above.

22 AGGRAVATING CIRCUMSTANCES

23 18. On or about June 10, 1984, the Board adopted a Stipulation in Settlement
24 of an Accusation against Respondent, also known as Elizabeth Helton, R.N., License No.
25 U 317563, in Case No. 83-138. The Board revoked Respondent's license; however, the revocation
26 was stayed and Respondent was placed on three years probation for misconduct and
27 unprofessional conduct. The circumstances surrounding the disciplinary action are as follows:

28 ///

1 a. On or about November 10, 1981, while employed at Ventura General
2 Hospital, Ventura, California, Respondent made false and grossly incorrect and grossly
3 inconsistent entries in the charts of two patients indicating that said patients had been
4 administered specific amounts of injectable 75mg Demerol.

5 b. On or about November 10, 1981, while employed at Ventura General
6 Hospital, Ventura, California, Respondent withdrew controlled substances from the hospital
7 narcotics supply for her own use.

8 c. On or about November 10, 1981, while on duty, at Ventura General
9 Hospital, Ventura, California, Respondent self administered drugs, which impaired her ability to
10 conduct her nursing duties and function in a safe and competent manner.

11 P R A Y E R

12 WHEREFORE, Complainant requests that a hearing be held on the matters herein
13 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

14 1. Revoking or suspending Registered Nursing License No. 317563, issued to
15 Elizabeth Joan McIntosh, aka Elizabeth Joan Helton;

16 2. Ordering Elizabeth Joan McIntosh to pay the Board of Registered Nursing
17 the reasonable costs of the investigation and enforcement of this case, pursuant to Business and
18 Professions Code section 125.3;

19 3. Taking such other and further action as deemed necessary and proper.

20 DATED: 4/9/84

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RUTH ANN TERRY, M.P.H., R.N.
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant